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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TAX DIVISION

CASINO ASSOCIATES, LTD.,

v. Tax Docket No. 5944-93

DISTRICT OF COLUMBIA

MEMORANDUM OPINION AND ORDER

Petitioner is appealing two supplemental assessments for each half of Tax Year 1993 for a property located at 1401 H Street, N.W. in the District of Columbia (Lot 66, Square 22). During this particular Tax Year, this property was undergoing construction of an office building, as an improvement to the land at this site.

Initially, a prior judge of the Tax Division entered summary judgment in favor of the petitioner, based upon an issue of administrative *res judicata*. Ultimately, that decision was reversed on appeal. *District of Columbia v. Casino Assoc., Ltd.*, 684 A.2d 322 (D.C. 1996). Following remand from the Court of Appeals, the Petitioner herein filed a Motion for Partial Summary Judgment, which is opposed by the District. The merits of the tax assessment now must be decided.

This Court heard oral argument on the Motion for Partial Summary Judgment and finds that the Motion must be denied based upon the following analysis.

I. NATURE OF THE ISSUE PRESENTED

The specific issue that is raised by the Petitioner involves the matter of statutory construction and reference to legislative history. The issue also requires this Court to read the tax Code as a whole, so as not to improperly isolate one aspect of the law from the broad purpose of the taxation system.

The question before this Court can be framed as follows: whether, for a commercial property under construction that is less than 65% complete, the District is limited to imposing tax on only those discrete portions of the improvements for which certificates of occupancy have been issued, or whether the District nonetheless may impose an assessment on the entire property. As a practical matter, the District argues that the issuance of only a single certificate of occupancy (during construction in progress) is essentially a "trigger" that allows the District to assess the entire property, even if only a very small area can actually be occupied.

The resolution of this issue requires the Court to interpret the meaning of relevant portions of D.C. Code § 47-829(e)(2).

II. MATERIAL FACTS NOT IN DISPUTE

The assessment that is the subject of this appeal is contained in the District's July 30, 1993 notification to the Petitioner that the District was reassessing the property for both halves of Tax Year 1993. Real property assessments are set forth in terms of single valuation amount that is the sum of a value for the land and

a value for any improvements. The original assessment for this particular Tax Year was based upon a value of $35,743,776 for the land and a value of $0 (zero) for improvements. The disputed reassessments were attributable to increased valuation of the improvements from zero to $21,046,304. The valuation of the land remained unchanged. Thus, the newly reassessed value was a total of $56,797,080.

The specific reason for the reassessment now being appealed was the fact that certificates of occupancy had been issued for certain portions of the partially-built office building. The District increased the assessment in reliance upon D.C. Code § 47-829(e)(1)(C) and (2) (1996 Supp.) which requires the Mayor to "assess the estimated market value of all real property, by lot and square, if since the last annual or supplemental assessment . . . [t]here is construction in progress . . . and [a] certificate of occupancy for the real property has been issued." D.C. Code § 48-829(e)(1)(C) and (2) [emphasis supplied].

Without a doubt, at the time of the notification of reassessment, certificates of occupancy ("COs") had been issued for certain limited portions of the improvements at 1401 H Street, N.W. The improvements were then still under construction.

Certificates of occupancy had been issued by the District of Columbia for several parts of the building, such as the Engineer's Office (issued on April 1, 1992) and a retail store known as the Sandwich Chef (issued on December 15, 1992).

It is also not disputed herein that the reassessments were

calculated upon an estimate of the fair market value of the entire property, not merely the value of those sub-parts of the building for which the COs had been issued.

III. RESOLUTION OF THE ISSUES PRESENTED

The taxpayer contends that legislative history of the relevant Code provision proves that, where a property is under construction, the District is permitted to reassess only the land plus those particular portions of a partially constructed building (plus the land) for which a certificate of occupancy has been issued -- until the construction is at least 65% complete. At that juncture, according to the taxpayer, the Code then permits the District to assess the entire property without regard to individual certificates of occupancy. The significance of this argument is that the subject property's ongoing construction **had not** achieved the level of 65% of completeness at the time that the now-disputed reassessment was issued. Id. at 323.

The District of Columbia, on the other hand, relies on two points. First, the District contends that the Code plainly requires that all real property assessments address a property by its lot and square number, rather than bits and pieces or sub-portions that are denominated in some other fashion. Second, the District argues that Section 829(e) must be read to list several separate and distinct triggering factors that each permit the District to impose a reassessment on a piece of real property. The District's contention is that completion of 65% of ongoing

construction is only one such triggering factor, and that a **totally separate triggering factor** is the issuance of **any** CO for any part of a property that is under construction.

This Court concludes that the answers to these questions can be resolved by reliance upon the plain words of the statute itself. Nonetheless, for the sake of completeness, the Court has reviewed the legislative history of this statute to determine any particular intent of the Council. Ultimately, the Court does not find any evidence that the Council's intent was consistent with the interpretation urged by the Petitioner.

1. **Plain words of the statute**. The Court has an obligation to first examine the statute itself to determine its meaning. The District of Columbia Court of Appeals has observed:

> The primary rule of statutory construction is that the intent of the legislature is to be found in the language which it has used. Moreover, the words of the statute should be construed according to their ordinary sense, and with the meaning commonly attributed to them.

J. Parreco & Son v. District of Columbia Rental Hous. Comm'n., 567 A.2d 43, 46 (D.C. 1989)(citations omitted).

Furthermore, "a statutory provision is to be read, whenever possible, in harmony with other provisions to which it naturally relates." In Re L.H., 634 A.2d 1230, 1231 (D.C. 1993); see Carey v. Crane Serv. Co., 457 A.2d 1102, 1108 (D.C. 1983)(quoting United Mine Workers of Am. v. Andrus, 189 U.S.App.D.C. 110, 114, 581 F.2d 888, 892, cert. denied, 439 U.S. 928 (1978)("[s]tatutory provisions are to be construed not in isolation, but together with other

related provisions").

Here, the statute on its face is clear that the assessment of real property is made by defining the subject property by its "lot and square." This explicit language is used in the statute now in dispute. Moreover, this language referring to "lot and square" is a longstanding, basic tenet of taxation of realty in the District of Columbia. The basic real property taxation statute has always provided for taxation by "lot and square," not by postal address or any other mode of defining the parameters of the realty. Related Code provisions state that the term "real property" "means real estate identified by plat on the records of the District of Columbia Surveyor according to the lot and square together with improvements thereon." D.C. Code § 47-802(1).

The term "improvement" is defined in the Code as "a building or other relatively permanent structure or development located on or attached to real property." D.C. Code § 47-830.

Because the Code is so unambiguous as to the meaning of "real property," the Counsel itself could not have been referring to "improvements" or sub-parts thereof when it continually used the term "real property." Its reference to assessments by "lot and square" has never wavered.

Further, the District of Columbia Court of Appeals has firmly ruled that "if a lot has an improvement on it, the total property consists of land and an improvement." 1111 19th Street Assoc. v. District of Columbia, 521 A.2d 260, 269 (D.C.), cert. denied, 484 U.S. 927 (1987). Thus, Courts have consistently followed the lead

of the legislature in carefully noting that the "property" includes all of its land and improvements.

2. **Analysis of legislative history**. The section of the Code that is presently in dispute evolved over several months of legislative consideration during 1990. The deliberations of the Committee on Finance and Revenue are embraced in two Reports: one issued on July 5, 1990 and the other issues on October 18, 1990. The original bill that was under consideration was known as Bill 8-170, the "Real Property Improvements and New Construction Tax Amendment Act of 1990" (hereinafter "the Bill").[1]

In the July 5, 1990 Report, the Committee expressed the conceptual goal of enacting the language that is now in the Code. The Report provides the following informative commentary:

> In order for the District to assess . . . new structures, the structure must be 'erected and roofed but prior to completion.' Technological advancement in the construction industry coupled with the Department of Finance and Revenue's interpretation of 'erected and roofed' **has resulted in a loophole** in this law allowing for abuse. Today, new construction projects may receive certificates of occupancy and open for business on all but the top floors and escape appropriate assessments and taxation because the roof to the structure has not been completed. As a result, the District is deprived of much needed revenues, and new construction (whether of a new building or of an addition to or improvement of an old building) fails to carry its fair share of the real property tax burden and may enjoy a competitive advantage over already existing structures. . . .

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[1]Copies of the Reports are found in the record as Exhibits attached to Petitioner's Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment.

> Current law requires that the Mayor specify the tract or lot of land on which each structure has been erected or roofed, is being completed or on which construction is in progress and the value of such structure or improvement and add such valuation to the annual assessment. Bill 8-170 requires the supplemental assessment to occur if the change in market value of the real property is $100 thousand or more **or if** a certificate of occupancy has been issued. This trigger provision is provided so as to provide a sufficient floor or minimum level of construction which truly adds a worthy value to the overall estimated market value. To further ensure that a minimum level of construction in progress is only subject to a supplemental assessment, **Bill 8-170 requires that at least 15% of the total estimated construction has occurred**, so as not to assess and tax a hole in the ground or the initial pouring of concrete. . . . The change in estimated market value does not necessarily refer to the cost of the improvement, addition or construction materials but rather the value of **the entire improvement** which the new construction or improvement adds. While cost and value may be the same, they are not always synonymous, therefore it is the intent of this provision to assess the entire structure anew, factoring in the contributory value of any addition or improvement of old structures and necessarily the value or cost of the addition or improvement itself.

D.C. COUNCIL COMM. ON FINANCE AND REVENUE, REP. ON BILL 8-170, REAL PROPERTY IMPROVEMENTS AND NEW CONSTRUCTION TAX AMENDMENT ACT OF 1990 at 6-7 (July 5, 1990)(emphasis supplied).

The plain words of the Report demonstrate that the Committee's intent was to ensure that an entire property would be taxed if two threshold elements were met: (1) that construction was in progress at a level that was at least 15% complete and (2) that any certificate of occupancy had been issued.

The consistent theme of the Report was that the entire

property itself would be subject to tax upon the occurrence of certain specified events. There is no language in this Report to suggest that only the discrete areas subject to an individual certificate of occupancy could be subject to tax. The issuance of any certificate whatsoever was designed to be a "triggering factor" to one unitary assessment of the overall property.

Furthermore, the lack of any intent to authorize piecemeal taxation according to individual, certificated areas is totally belied in the language of Bill 8-170 mandating that the Mayor assess all real property "by lot and square." Thus, the definition of the property is calculated by the measurements of the total extent of the lot and square.

This "lot and square" approach makes perfect sense because the District of Columbia Surveyor's plats are the official word on the identity of all real property in this jurisdiction. Otherwise, the extent of the property that is subject to tax could be easily manipulated by the taxpayer -- simply by the manner in which the area (and/or its internal use or purpose) is described or measured in the application for a certificate of occupancy. That type of chaos would be utterly at odds with the notion of trying close a "loophole." Thus, the Council could not have intended any such system.[2]

The second Report that was issued by the Committee reflects

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[2] "[T]ax laws ought to be given a reasonable construction . . in order to carry out the intention of the legislature." District of Columbia v. Acme Reporting Co., 530 A.2d 708, 712 (D.C. 1987) (citations omitted).

two distinct changes in what the new law would provide, but with no change in the basic theme of avoiding the previously-described "loophole" problem.

First, the Committee revisited the issue of how much new construction should be complete before any reassessment liability would be incurred. The Committee revised the Bill so as to increase the minimum completion level from 15% to 65%.[3]

Second, and more importantly to the Petitioner herein, the Committee decided to decouple the completion percentage from the matter of the issuance of a certificate of occupancy.

Under the new version of the bill, the issuance of any certificate of occupancy became a totally separate "triggering factor" that would authorize the Department to reassess the entire property.

According to the Report issued on October 18, 1990, the creation of two different "triggering mechanisms," was simply another device for addressing the concept of equalization. The underlying reasons as to why the Committee chose to decouple these two factors is actually not relevant to this tax appeal. Whatever those reasons were, this was a policy choice that was well within the power of the Legislative Branch. What really matters, however, is that the Committee Report does clearly set forth the legislature's intention to change the bill so that the two

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[3]This was a policy change predicated on considerations of what is acceptable as "complete" in the construction industry, as well as considerations of how this subject is handled in neighboring jurisdictions.

different triggering events were consciously designed to operate independently of each other. The Committee wrote:

> Bill 8-170 furthers the equalization of all real property which is in operation by placing those properties on the assessment roll for appropriate taxation by requiring a supplemental assessment **when a certificate of occupancy has been issued for the real property**. Thus, if any new improvement, addition or renovation, or construction in progress (**regardless of whether 65% of the total estimated construction is complete** or the change in estimated market value of the real property is $100,000 or more) is issued a certificate of occupancy[,] **that real property** will be subject to a supplemental assessment.

COMM. REP. at 8-9 (Oct. 18, 1990)(emphasis supplied). The parenthetical phrase utilizing the word "regardless" is unmistakable. It cannot be ignored.[4]

In the second Committee Report, the language clearly means that the overall property itself will be subject to a supplemental assessment. Nothing is said about piecemeal taxation of the areas only covered by a particular certificate of occupancy. Moreover,

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[4]It would have been illogical for the Council to intend that the real property assessment be predicated only on sub-parts of the improvements that were certificated. This is because the piecemeal approach simply re-opens the same, recurring debate about the percentage of the property that is "complete." If the Council had intended that the realty be subject to tax based upon a certain percentage of square footage that was certificated, it would have been easy for the Council to be explicit on this point. No such provision was included in the final version of the Bill, even though the Committee was manifestly grappling with and re-evaluating the importance of percentage, as it applied to construction. With the concept of "percentage" being a key focus of Committee deliberations, it is unthinkable that the Council would not have included more specific provisions about percentage of occupancy as a triggering factor -- if this had been its actual intent. Consequently, when the Code refers to "a" certificate of occupancy, it means only one.

since the practical context of this provision involves "construction in progress," it is rather obvious that a certificate of occupancy is not one that would embrace the entire building, addition, or other improvement. Clearly, it would only be a certificate for some lesser part of the improvements.

This Court is also constrained to recognize that the sudden creation of a new scheme of taxation of sub-parts of improvements to real property would have been so radical that the legislative history surely would have included an explanation for such a dramatic departure from the established system of taxation. No such discussion is found in any legislative history of the Bill. If the Council had actually intended to jettison the basic tenet of taxing realty by "lot and square," there would be no mystery or subtlety about it -- and no need to litigate the question many years later.

Finally, the Court pauses to say that the practical thrust of the Petitioner's concern appears to be the specter of having to pay taxes on an entire property while only small portions of it can be used to generate income. This particular concern is understandable. However, the issue of the importance or unimportance of the limited certificates of occupancy will not necessarily disappear from this case even though the instant Motion must be denied.

Since income-producing properties normally are assessed and appraised according to the so-called "income approach," the income level of the property can be addressed by all parties, as part of

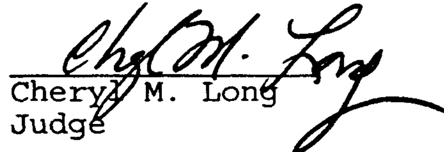
their presentation at trial, or in settlement discussions.[5]

Upon reflection and close analysis, in light of the plain words of the Code and its legislative history, the Government's position on the instant Motion is meritorious.

WHEREFORE, it is by the Court this 17th day of April, 1998

ORDERED that Petitioner's Motion for Partial Summary Judgment is denied; and it is

FURTHER ORDERED that counsel shall appear before this Court at 9:30 a.m. on **June 22, 1998**, for a status hearing in order to select a mediation date or otherwise set a schedule for further litigation.



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[5]The Court will not speculate about the ultimate, net effect of the certificates of occupancy upon overall value. This is a matter better left to settlement or trial on the merits.